

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**November 21, 2001**

<b>IN RE:</b>	)	
	)	
<b>COMPLAINT OF XO TENNESSEE, INC.</b>	)	<b>DOCKET NO.</b>
<b>AGAINST BELL SOUTH</b>	)	<b>01-00868</b>
<b>TELECOMMUNICATIONS, INC.</b>	)	

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**ORDER GRANTING IN PART MOTION TO  
COMPEL RESPONSES TO DISCOVERY**

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This docket came before the Hearing Officer for consideration of the *Motion to Compel Responses to Discovery* filed by Access Integrated Network, Inc. ("AIN") and XO Tennessee, Inc. ("XO") on November 20, 2001.

**I. Relevant Procedural History**

AIN filed a complaint against BellSouth Telecommunications, Inc. ("BellSouth") on September 18, 2001. This complaint was assigned Docket No. 01-00808. BellSouth filed its answer to AIN's complaint on October 2, 2001.

XO filed its complaint against BellSouth on October 9, 2001. This complaint was assigned Docket No. 01-00868. BellSouth filed its answer to XO's complaint on October 25, 2001.

On November 1, 2001, AIN and XO filed motions to take discovery. AIN and XO attached identical requests to their respective motions. In addition, both AIN and XO requested that the Authority order BellSouth to respond within ten days. BellSouth filed its response to the motions on November 2, 2001 objecting to the ten-day response period requested by AIN and XO.

On November 6, 2001, the Hearing Officer entered an order consolidating Docket Nos. 01-00808 and 01-00868 into Docket No. 01-00868. The Hearing Officer also set out a procedural schedule designed to meet the sixty day resolution date imposed by the Directors during the October 23, 2001 Authority Conference.<sup>1</sup> Pursuant to the procedural schedule, discovery responses were due on November 16, 2001.

BellSouth filed discovery responses on November 16, 2001, and again on November 19, 2001, after the entry of a protective order. In its November 16<sup>th</sup> filing, BellSouth filed the following response to Interrogatory No. 10:

BellSouth objects to this request on the grounds that it is overly broad, that responding to it would be unduly burdensome, and that it is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, the Tennessee customers listed in the attachment to Item No. 9 are earning points under the offering that is described in BellSouth's Response to Item No. 2 of the Staff's Data Requests (which was inaccurately described by certain sales personnel as including "free" or "complimentary" months of service). Some of these customers have had some of the points that they have earned applied to their BellSouth bills in the form of credits, the dollar value of which is set forth in the attachment to Item No. 9. Customers will be able to redeem their remaining points in the future, but not as credits to their bills.<sup>2</sup>

On November 20, 2001, AIN and XO filed a *Motion to Compel Responses to Discovery* ("Motion") specifically directed at this response. In its Motion, AIN and XO asked the Hearing Officer to compel BellSouth to respond fully to Interrogatory No. 10, which states:

List, on a customer by customer basis, all goods services or benefits of any kind provided by BellSouth Select, Inc. to any Tennessee customer. In your response, provide the estimated monetary value of those benefits to each customer.<sup>3</sup>

AIN and XO explain that the purpose of this interrogatory is to "discover the extent to which BellSouth, through an unregulated affiliate, has engaged in a systematic, region-wide scheme of

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<sup>1</sup> See Transcript of Proceeding, Oct. 23, 2001, pp. 22-23 (Authority Conference).

<sup>2</sup> *BellSouth Telecommunications, Inc.'s Response to the First Discovery Requests of Access Integrated Networks, Inc. and XO Tennessee, Inc.*, Item No. 10, p. 1 of 1 (Nov. 16, 2001).

<sup>3</sup> *Motion to Compel Responses to Discovery*, p. 1 (Nov. 20, 2001).

offering and providing non-tariffed rebates to customers in exchange for the purchase of BellSouth's regulated telecommunications services.”<sup>4</sup>

## **II. Findings and Conclusions**

The Hearing Officer finds that a response to the Motion is not necessary and the Hearing Officer is permitted to dispose of the Motion without requiring BellSouth to file a response. Authority Rule 1220-1-2-.06(1) provides that parties opposing a motion shall file a response within seven days of the motion.<sup>5</sup> Authority Rule 1220-1-1-.05(1) provides: “For good cause, including expediting the disposition of any matter, the Authority may waive the requirements or provisions of any of these rules in a particular proceeding, on motion of a party or on its own motion, except when a rule embodies a statutory requirement.”<sup>6</sup>

There is good cause in this case to waive Rule 1220-1-2-.06(1) to the extent that it may require an opposing party to file a response. As previously discussed in this order and the November 6, 2001 *Order*, the Authority issued a directive that the Hearing Officer attempt to resolve these complaints by December 10, 2001.<sup>7</sup> Thus, there is a need to expedite the disposition of this matter. Further, BellSouth has had an opportunity to state its objection to the interrogatory and the Hearing Officer has considered such objection in rendering the decision below.

The Hearing Officer concludes that the motion should be granted in part. As explained by AIN and XO, the interrogatory requests information regarding goods, services or benefits provided to Tennessee customers in exchange for all BellSouth regulated and unregulated services.<sup>8</sup> However, both complaints, which are the subject of this docket, allege that BellSouth

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> See Rules & Reg. of the State of Tenn. 1220-1-2-.06(1) (Sept. 2000 Rev.).

<sup>6</sup> *Id.* 1220-1-1-.05(1).

<sup>7</sup> See *Order*, p. 8 (Nov. 6, 2001).

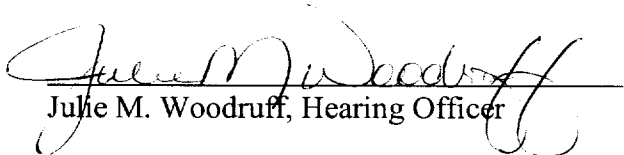
<sup>8</sup> See *Motion to Compel Responses to Discovery*, pp. 1-2 (Nov. 20, 2001).


violated the terms of the Key Business Discount Program by offering three free months of service.<sup>9</sup> Therefore, it is the finding of the Hearing Officer that the Motion should be granted such that BellSouth shall list, if it has not done so already,<sup>10</sup> on a customer by customer basis, all goods, services or benefits of any kind provided by BellSouth Select, Inc. to any Tennessee customer in exchange for purchasing services through the Key Business Discount Program.<sup>11</sup> In addition, BellSouth shall provide the estimated monetary value as requested by AIN and XO.

**IT IS THEREFORE ORDERED THAT:**

The *Motion to Compel Responses to Discovery* is granted in part such that BellSouth shall list, if it has not done so already, on a customer by customer basis, all goods, services or benefits of any kind provided by BellSouth Select, Inc. to any Tennessee customer in exchange for purchasing services through the Key Business Discount Program. BellSouth shall also provide the estimated monetary value of each good, service or benefit. BellSouth shall provide and file such responses no later than **10:00 a.m., Monday, November 26, 2001.**

ATTEST:

  
Julie M. Woodruff, Hearing Officer

  
K. David Waddell, Executive Secretary

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<sup>9</sup> See *Complaint of Access Integrated Networks, Inc.*, p. 2, paras. 3-6 ( Sept. 18, 2001); *Complaint of XO Tennessee, Inc.*, pp. 1-2, paras. 3, 5 & 6 (Oct. 9, 2001).

<sup>10</sup> It is unclear from BellSouth's November 16, 2001 response whether this is what it included in its response to Item 9. See *BellSouth Telecommunications, Inc.'s Response to the First Discovery Requests of Access Integrated Networks, Inc. and XO Tennessee, Inc.*, Item No. 9, p. 1 of 1 (Nov. 16, 2001); *Response to Staff Data Requests*, Item No. 2, p. 1 (Oct. 26, 2001).

<sup>11</sup> The Authority approved the 2001 Key Business Discount Program at the June 26, 2001 Authority Conference. See Transcript of Proceedings, Jun. 26, 2001, pp. 40-43 (Authority Conference).